

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 16, 2005

Department: County Attorney

Bulk Item: Yes ☐ No ☒

Staff Contact Person: John R. Collins

AGENDA ITEM WORDING:

This item is for approval of the Standard Consulting Agreement for Legal Services for Michael H. Syme, who will be preparing REP/RFQ/RFB, for an affordable housing project involving the Monroe County Land Authority, Monroe County Board of Commissioners, and a private developer.

ITEM BACKGROUND:

The County Attorney has determined that a consultant is needed to assist the county in preparation of REP/RFQ/RFB, for an affordable housing project involving the Monroe County Land Authority, Monroe County Board of Commissioners, and a private developer.

PREVIOUS RELEVANT BOCC ACTION: NONE

CONTRACT/AGREEMENT CHANGES: NONE

STAFF RECOMMENDATIONS: ACCEPT

TOTAL COST: fees and costs not to exceed \$10,000 **BUDGETED:** YES ☒ NO

COST TO COUNTY: \$10,000 **SOURCE OF FUNDS:** County Attorney

REVENUE PRODUCING: YES ☐ NO ☒ Amount billed monthly

APPROVED BY: County Atty ☒ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL: John R. Collins 11/16/05
John R. Collins, County Attorney

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____ **AGENDA Item#** _____

1 **MONROE COUNTY, FLORIDA**
2 **STANDARD LEGAL SERVICES AGREEMENT**
3 **(CONSULTING/ADVISING)**

AGREEMENT NUMBER:
CAY-CON-2005-09-01

4
5 **THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA**, as the
6 legislative and governing body of Monroe County, Florida, and in accordance with the powers
7 enumerated in Section 125.01, Florida Statutes (the "County") and **MICHAEL H. SYME** of Cohen
8 & Grigsby, P.C. (the "Attorney") hereby enter into this Agreement regarding the retention of
9 Attorney by County to provide legal advice and services:

10
11 **1. Client:** The Client is the County and the Monroe County Land Authority, and to the extent
12 ethically permissible, elected and appointed officers and employees of Client, unless County or Land
13 Authority advises Attorney otherwise. In the event that Attorney cannot ethically represent
14 individuals in addition to County and Land Authority, Attorney shall advise County and Land
15 Authority in writing of that fact immediately.

16
17 **2. Attorney:** The Attorney is the individual named above and whose signature appears at the
18 bottom of this Agreement. Attorney or members of Cohen & Grigsby, P.C. is/are licensed to practice
19 law in all jurisdictions relevant to this matter. If Attorney practices with others who may also
20 provide services to Client, he or she understands that Client expects that Attorney will be responsible
21 for managing the representation, assuring compliance of others with the terms of this Agreement and
22 ethical requirements, preparing and substantiating all bills, and communicating with Client.
23 Attorney may not delegate or outsource this work without full written disclosure to, and prior written
24 approval from, Client.

25
26 **3. Matter:** Attorney has been retained by Client in connection with the matter described in
27 **Exhibit A.** Attorney represents that he or she is competent and available to handle that matter. In
28 the event that additional matters are assigned by Client to Attorney, this agreement shall apply to
29 those matters as well, unless a separate Agreement is required by Client.

30
31 **3.1. Review of ethical obligations before initiating representation:** Attorney has
32 conducted a thorough investigation and determined that neither Attorney nor his or her firm has any
33 ethical impediment, real or potential, to representing Client. To the extent that any ethical
34 impediment, real or potential, is discovered or ever arises, Attorney shall immediately inform Client
35 in writing of the impediment (regardless of whether Attorney believes he or she has taken all steps
36 necessary to avoid the impediment and regardless of whether Attorney believes that the impediment
37 is insubstantial or questionable), make full disclosure of the situation to Client, obtain Client's
38 express, written consent to continue the representation of the other represented party, and take all
39 steps requested by Client to avoid or mitigate the impediment. Attorney understands that, if a direct
40 or indirect conflict of interest arises which, in the opinion of Client, cannot be avoided or mitigated
41 under the Rules of Professional Conduct of The Florida Bar, Client may, in its discretion, (a) obtain
42 reimbursement from Attorney for all fees and expenses paid to Attorney in this matter which were
43 incurred during the period of the conflict; (b) obtain cancellation of all amounts allegedly owed by
44 Client to Attorney incurred during the period of the conflict; and (c) obtain reimbursement for
45 consequential expenses incurred by Client, including the cost of replacement counsel.

1
2 **3.2. Limitations to scope of representation:** Except where prohibited by the Rules of
3 Professional Conduct of The Florida Bar, AND UNLESS ATTORNEY IS OTHERWISE
4 INFORMED TO THE CONTRARY, the Monroe County Attorney's Office will serve as co-counsel
5 in all matters covered by this Agreement. As co-counsel, the Office attorney's will assist Attorney
6 by performing tasks requested by Attorney, including but not limited to serving as local counsel;
7 securing the cooperation of Client employee's, officers, and others in discovery and other matters;
8 obtaining evidentiary materials from Client files; assisting with discovery; attending hearings and
9 depositions; filing pleadings; arranging for closed attorney-client sessions with the Board of County
10 Commissioners; and performing other tasks as necessary and convenient for Attorney. Decisions
11 as to tactical approaches to be utilized shall be the ultimate responsibility of the Attorney, and issues
12 which rise to the level of a client decision shall be resolved by the Board of County Commissioners.
13 Any further limitations or special conditions shall be as set forth in **Exhibit A**.
14

15 **3.3. Term of Agreement and Representation:** This Agreement and representation by
16 Attorney is effective upon acceptance and approval by Client in accordance with Client's policies,
17 ordinances, or governing statutes. The representation shall continue until terminated by either
18 Client, or by the Attorney in accordance with ethical requirements.
19

20 **3.4. Client expectations and goals:** Client expects the Attorney to seek the best
21 resolution or result for Client at the lowest reasonable cost to the taxpayers. Any other expectations
22 and goals shall be as set forth in **Exhibit A**.
23

24 **4. Attorney Fee (Hourly):** Attorney will be paid for his or her services based on the number
25 of hours expended on behalf of Client (rounded to the nearest tenth hour for each time entry), not
26 to include time billable to or compensated by other parties represented by Attorney, multiplied by
27 the Attorney's hourly rate as set forth in **Exhibit A**. The following minimum billing documentation
28 and time-keeper requirements are a condition precedent to payment by Client.
29

30 **4.1. Non-billable time:** Attorney will bill Client only for time reasonably and necessarily
31 incurred to render professional services on Client's behalf in accordance with this Agreement. Time
32 attributable to billing questions is not billable. Time expended by time-keepers who have not been
33 approved by Client as indicated on **Exhibit A** is also not billable.
34

35 **4.2. Changes to hourly rates:** Attorney will charge no more than the hourly rate quoted
36 in **Exhibit A** throughout the duration of the matter, unless otherwise agreed in writing signed by
37 Client.
38

39 **4.3. Discounts to other Represented Parties:** The rates Attorney will charge Client
40 represent the lowest rates charged by the same time-keepers to other parties represented by Attorney.
41 In the event that lower rates or discounts are provided to other parties, Attorney and approved time-
42 keepers will also provide them on the same basis to Client.
43

44 **4.4. Additional time-keepers:** Additional time-keepers may not be added to the matter
45 without advance written approval from Client. In the event that additional time-keepers providing

1 services which are to be billed to Client are to be added to perform services under this Agreement,
2 then their hourly rates shall be provided to Client in advance, and, upon written approval by Client,
3 their rates and billing practices shall comply with the requirements of this Agreement. Additional
4 time-keepers approved by Client are listed in **Exhibit A** to this Agreement, and this **Exhibit A** may
5 be amended from time to time, upon mutual agreement of Client and the Attorney, to evidence the
6 then-current circumstances.

7
8 **4.5. Existing work product:** To the extent the Attorney makes use of existing work
9 product, e.g., in the form of research previously performed for another party, then Attorney may bill
10 only that time expended in using that work product for Client. In other words, no premium, markup,
11 or other adjustment may be made to bill Client for time spent on work already performed.

12
13 **4.6. Travel:** Travel restrictions, including restrictions on billing time during travel, are
14 set forth below.

15
16 **5. Billing of Fees and Expenses:** Attorney shall comply with the following requirements as
17 to billing fees and expenses as a condition precedent to Client's obligation to pay each bill:

18
19 **5.1. Monthly bills:** Unless otherwise agreed in a writing signed by Client, bills shall be
20 issued monthly by Attorney within 15 days after the close of each month. Attorney understands that
21 Client requires prompt bills in part to facilitate effective management of the representation and fees.

22
23 **5.2. Bill format:** Attorney shall provide detailed, itemized bills which shall, at a
24 minimum:

25
26 **5.2.1 Description.** Provide a general description of the matter, to include the name
27 of Client department or constitutional officer, if not indicated in the title of the matter, for which
28 legal services are being performed (Preparation of Utility Bond Financing Agreement).

29
30 **5.2.2 Personnel.** Clearly identify each person performing services (i.e., time-
31 keepers) in conjunction with each entry.

32
33 **5.2.3 Other Personnel.** Clearly identify all persons who are not full-time lawyers
34 employed by the Attorney's firm (including subcontractors, independent contractors, temporary
35 employees, and outsourcing providers).

36
37 **5.2.4 Time Records.** Record the time expended by each time-keeper separately.
38 In those situations where the minimum billing increment exceeds the actual time spent on a task and
39 several of these "minor" tasks are performed, it is expected that the services will be aggregated until
40 the total actual time spent meets the minimum billing increment.

41
42 **5.2.5 Totals and By Task.** State the amount of time expended by each time-keeper
43 daily (and, within each day, broken down by task where more than one project or task was worked
44 upon within the same day).

1 **5.2.6 Task Description.** Describe within each itemized daily task entry, in sufficient
2 detail to readily allow Client to determine the necessity for and reasonableness of the time expended,
3 the services performed, the project or task each service relates to, the subject and purpose of each
4 service, and the names of others who were present or communicated with in the course of performing
5 the service. Included should be a reasonably specific delineation of services sufficiently itemized
6 to allocate time within a matter to such categories of effort as Legal Research, Fact Gathering,
7 Internal Conferences, Communications with Client, Particular Document Drafting, Commission
8 Appearances, Meeting Attendance, and so forth.

9
10 **5.2.7 Summary of Rates.** In a summary at the beginning or end of the bill, provide
11 the current hourly rate for each time-keeper, the total time billed by each time-keeper in that bill,
12 the product of the total time and hourly rate for each time-keeper, the total fees charged, and a
13 reconciliation between the amount charged and any applicable estimated or budgeted amount, by
14 task. In addition, each monthly statement should show the aggregate billing for that matter from the
15 commencement of the matter through the currently-billed month.

16
17 **5.2.8 Digital/Electronic Copy.** Client is currently using Time Matters and Time
18 Billing software in the County Attorney's office, and prefers that an electronic reporting software
19 which can be incorporated into Client's software data base for tracking and reporting purposes be
20 used by Attorney. Attorney should discuss the capabilities of Attorney's billing system with Client
21 before rendering the first bill. Client should receive a digital electronic/computerized version of
22 each bill, together with a paper copy, to facilitate bill review.

23
24 **5.3. Expenses:** Client will pay the actual, reasonable cost of the following expense items
25 if incurred in accordance with the guidelines below and promptly itemized in Attorney's monthly
26 bill:

27
28 **5.3.1 Reimbursable expenses:** Actual cost for necessary long distance telephone
29 calls, telecopying at \$.25 per outgoing page, overnight or expedited delivery, couriers, photocopying
30 at \$.15 per page, postage, court fees, and other expenses approved in advance by Client or as listed
31 below:

32
33 **5.3.1.1. Expedited or emergency services:** Attorney is expected to
34 avoid using expedited or emergency services, such as express delivery services, couriers,
35 telecopying, overtime, and so on, unless necessary because of unexpected developments or
36 extremely short deadlines. Client may refuse to pay for any such expenses when incurred routinely
37 or because of Attorney's failure to manage the matter efficiently.

38
39 **5.3.1.2. Computerized research:** Attorney is expected to use
40 computerized research services cost-effectively to reduce time spent on research, for example, while
41 closely-monitoring computerized research to insure that the charges are reasonable and necessary.
42 Attorney is expected to pass through to Client any discounts or other arrangements that reduce the
43 cost of computerized services.

44
45 **5.3.1.3. Photocopying:** Attorney is encouraged to use outside

1 copying services to reduce the cost of large-volume copying, provided that these expenses are
2 efficient, cost-effective, and incurred and billed in accordance with this Agreement. Attorney is
3 responsible for insuring that all copying complies with copyright obligations.
4

5 **5.3.1.4. Transcripts:** Transcripts should not be ordered without prior
6 approval from Client. Transcripts should not be ordered on an expedited basis unless necessary and
7 approved in advance by Client. Attorney should obtain digital electronic/computerized copies of
8 transcripts when available at a reasonable cost to avoid charging for time spent digesting or indexing
9 transcripts, and to allow Client to maintain a digital electronic/computerized database of all
10 transcripts.
11

12 **5.3.1.5 Travel Expenses:** Travel expenses within the Attorney's
13 local or metropolitan area will not be reimbursed if the time spent in transit is billed. Travel
14 expenses outside the metropolitan area may only be reimbursed if the travel was approved in
15 advance by Client. Reimbursable travel expenses, if approved in advance, are the cost of
16 transportation by the least expensive practicable means (e.g., coach class air travel), the cost of
17 reasonable hotel accommodations, and the cost of transportation while out of town (e.g., by cab or
18 rental car, whichever seems reasonable, at the lowest available rate). Travel expenses will be
19 reimbursed in accordance with the applicable provisions for "approved travelers" of the Monroe
20 County Code of Ordinances, will be summarized on the Monroe County Travel Form with all
21 applicable receipts attached thereto.
22

23 **5.3.1.6 Travel Time.** Time spent in transit, locally or otherwise, may
24 be billed only if (a) Attorney or time-keeper is unable to avoid traveling by using other forms of
25 communication and (b) Attorney or time-keeper is unable to bill time in transit to other parties.
26 Travel by more than one time-keeper at the same time to the same destination is not allowed without
27 prior approval from Client. Approved travel time during time-keeper's normal business hours will
28 be billed at the hourly rate listed for the time-keeper on **Exhibit A**. Approved travel time outside
29 of time-keeper's normal business hours will be billed at one-half the hourly rate listed for the time-
30 keeper on **Exhibit A**.
31

32 **5.3.2. Non-reimbursable expenses:** The following expenses will in no event be
33 reimbursable, unless specifically agreed to in advance in a writing signed by Client:
34

35 **5.3.2.1. Personal and Office Costs.** Meals for time-keepers,
36 overtime, word processing or computer charges, personal expenses, expenses that benefitted other
37 parties, expenses for books, costs of temporary employees, periodicals or other library materials,
38 internal filing or other document handling charges, clerical expenses, stationery and other supply
39 expenses, utilities, and any other expense that is either unreasonable or unnecessary. (The fact that
40 the firm charges other parties or that other firms charge their clients for an expense does not make
41 it reasonable or necessary.)
42

43 **5.3.2.2. Experts, consultants, support services, outsourced**
44 **services, etc.** Attorney is not authorized to retain experts, additional counsel, consultants, support
45 services, or the like, or to out source or delegate work outside Attorney's law firm, without prior

1 written approval by Client. Attorney will be responsible for selecting and managing the services
2 of others so that their services and expenses will be rendered in accordance with the terms of this
3 Agreement, including terms applicable to Attorney. Attorney will manage others to obtain cost-
4 effective services for Client. Unless otherwise agreed in writing, Attorney shall obtain a written
5 retainer agreement, in a form which may be specified by Client, from each service provider, with
6 bills from each provider being sent to both Attorney (for management purposes) and Client (for
7 review and payment).

8
9 **5.3.2.3. Expenses not passed through at actual cost.** Client will not
10 pay any markup for expenses. Client will only reimburse the Attorney for their actual approved out-
11 of-pocket costs and expenses, whether incurred personally by an approved time-keeper or incurred
12 by other approved personnel (such as experts, consultants, support services personnel, or outsourced
13 services personnel).

14
15 **5.3.2.4. Overhead not charged to Client.** Client will not pay for any
16 "expense" items that are in fact part of Attorney's overhead which should be included within
17 Attorney's fee.

18
19 **5.3.3. Advance approval of expenses.** In addition to the items noted above,
20 Attorney shall obtain advance approval from Client before incurring any expense in excess of \$
21 1,000.00 if Attorney expects to be reimbursed for that expense. Client may refuse to pay any
22 expense for which advance approval was not obtained by Attorney.

23
24 **5.3.4. Copies of receipts for expenses.** Attorney shall include copies of receipts for
25 all expenses with the itemized monthly bill. Client may refuse to pay any expense item for which
26 documentation is not provided by Attorney.

27
28 **5.3.5. Expenses (and fees) after termination.** Upon termination of the
29 representation, Attorney shall promptly bill Client for any remaining reimbursable expenses and
30 fees. Client may refuse to pay any fees or expenses not billed within 45 days of termination of the
31 representation. Attorney is also expected to cooperate promptly with all aspects of termination and,
32 if applicable, transition to other counsel. Payment for fees and expenses is contingent upon prompt,
33 full cooperation.

34
35 **5.4. Bill and expense documentation.** Attorney understands that Attorney must have
36 documentation to support all aspects of each bill, including fees and expenses, and must maintain
37 that documentation until at least one year after the termination of the representation. This
38 documentation shall be made available by Attorney to Client (or Client's designated representative,
39 including an accountant, the County Clerk or County Clerk's representative, or legal bill auditor)
40 upon Client's written request. Attorney agrees to cooperate with any examination of this
41 documentation and Attorney's fees and expenses, e.g., by responding promptly and completely to
42 any questions Client or its designated representative may have. Attorney shall notify Client in
43 writing at least 60 days in advance of destroying any such records and, in the event that Client
44 requests that they be preserved, shall preserve them at least one additional year or, at the option of
45 Client, delivered to Client for storage by Client, with Client responsible for paying the actual cost

of storage. This documentation shall include, for example, original time records, expense receipts, and documentation supporting the amount charged by Attorney for expense items generated by the Attorney or his or her firm. Client reserves the right not to pay any fee or expense item for which sufficient documentation is not available to determine whether the item was necessary and reasonable. Upon prior written Agreement by Client, Attorney may provide the documentation in digital electronic form in Adobe Portable Document Format (PDF) or in Alchemy format in lieu of the manual preservation requirements detailed above.

6. Payment terms: Attorney's request for payments and reimbursements may be made in either the Attorney's name or the name of the Attorney's law firm, as appropriate. Attorney bills complying with this Agreement are due and payable upon receipt. If the bill materially fails to comply with the requirements of this Agreement, then it is not due and payable until its deficiencies are remedied by Attorney. Client is entitled to a 1% prompt payment discount if a bill is paid within 15 days of receipt by Client or correction of deficiencies by Attorney, whichever is later, (or if the bill is satisfied by funds held by Attorney, e.g., in a trust account). Client shall not be liable for interest or other late charges unless specifically agreed to in advance in a writing signed by Client.

7. Budgets. Upon request by Client, Attorney will, within thirty (30) days after the request, prepare an estimate or budget of the likely costs, by task, of this matter, including fees and expenses, and a plan for handling the matter. Attorney will update the budget and plan at least once every three months. In the event that Attorney obtains information indicating that the budget (or any line item) may be exceeded by more than five percent, he or she will notify Client of that immediately in a written statement accompanying each bill, preferably in tabular form. Attorney will reconcile the budget with each month's bill, e.g., by explaining whether the billed amounts, by task, are more or less than the amounts budgeted therefore. Client shall have the right not to pay any amounts that are over budget or not included within the budget.

8. Staffing and matter management. Attorney has been retained specifically because Attorney, personally, is understood by Client to be able to handle this matter. Employment of additional individuals, whether attorneys, paralegals, or others, who will bill time to Client is not permitted without the advance written approval of Client.

8.1. Time-keeper changes. Changes in time-keepers, e.g., replacement of an attorney as well as increases or decreases in the number of the time-keepers working on the subject-matter of this Agreement, must have the advance written approval of Client. Client expects to receive discounts or other concessions so that any increases or changes in time-keepers will not result in unnecessary or unreasonable charges to Client, e.g., for training, internal conferences, and management.

8.2. Duplication of effort. Unless advance Client approval is obtained, Attorney will not have more than one time-keeper bill for the same activity. In the event that more than one person attends, only the time of the person with the lowest rate will be billable. Attorney is not permitted to use this matter to provide on the job training for a time-keeper, and bill for that time-keeper's services, without Client's advance approval.

1 **8.3. Matter management.** Attorney is responsible for managing the matter cost-
2 effectively and competently, e.g., by insuring that additional time-keepers are competent, properly
3 supervised, efficient, and in compliance with the terms of this Agreement as well as with ethical
4 obligations.

5
6 **8.4. Communications.** Client will expect that all communications between time keepers
7 other than Attorney and Client will be reviewed by Attorney and that Attorney will serve as the
8 point of contact for this matter, including billing questions. The point of contact for this matter at
9 Client is the County Attorney or the individual specifically identified in **Exhibit A**.

10
11 **8.5. Attorney cooperation.** Attorney will cooperate with Client or Client's
12 representatives to promptly provide all information Client requests or needs about the subject matter
13 of this Agreement and Attorney's bills.

14
15 **8.6. Temporary staff, delegation, outsourcing.** Attorney will not bill Client for the time
16 and expenses of temporary employees, including so-called "Temps" or contract attorneys or other
17 staff from outside companies, nor "outsource" or delegate work, nor charge for summer associates,
18 law clerks, or student clerks, (collectively "temporary staff" even if not temporarily employed)
19 without full advance disclosure of the employee's temporary or short-term status to Client, including
20 disclosure of the actual amount paid or to be paid to the individual. Unless Client expressly agrees
21 in writing to paying additional amounts after full disclosure by Attorney, Attorney may not charge
22 Client more than the actual cost paid by attorney.

23
24 **9. Confidentiality and public relations:** Attorney is not authorized to waive or release any
25 privilege or other protection of information – confidential, secret, or otherwise – obtained from or
26 on behalf of Client. Attorney is to keep all confidential, privileged, or secret information
27 confidential. This requirement is perpetual, i.e., it will continue even after the termination of the
28 relationship and this Agreement. This requirement is also intended to prohibit Attorney from using
29 information obtained from or on behalf of Client, including work product prepared at Client's
30 expense, for other parties represented by Attorney or his or her firm, without Client's advance
31 written approval. Attorney is not authorized to identify Client as a client, e.g., for purposes of
32 marketing or advertising, without Client's prior approval. Upon termination of the representation,
33 Attorney agrees to return promptly all information obtained from or on behalf of Client to Client.
34 Attorney is not authorized to communicate with the public, including the press, about Client or this
35 matter without the advance approval of Client.

36
37 **10. Ownership of Attorney files and work product:** Attorney understands that all files and
38 work product prepared by Attorney or his or her firm at the expense of Client (or for which Client
39 is otherwise billed) is the property of Client. Without Client's prior written approval, this work
40 product may not be used by Attorney or his or her firm nor disclosed by Attorney or his or her firm
41 to others, except in the normal course of Attorney's representation of Client in this matter. Attorney
42 agrees that Client owns all rights, including copyrights, to materials prepared by Client or by
43 Attorney on behalf of Client. Attorney shall notify Client in writing at least 60 days in advance of
44 destroying any such records and, in the event that Client requests that they be preserved, shall
45 preserve them at least one additional year (with Client responsible for paying the actual cost of

1 storage). Attorney shall provide Client with prompt access to (including the ability to make copies
2 of) all attorney files and work product, regardless of whether the representation or matter is ongoing
3 and whether attorney fees and expenses have been paid in full.
4

5 **11. Dispute resolution:** Attorney and Client agree that all disputes regarding Attorney's fees
6 or expenses are to be resolved pursuant to the procedures and practices for mediation by the
7 Attorney Consumer Assistance Program of the Florida Bar.
8

9 **12. Governing law, modification of this Agreement, entire agreement:** This Agreement is
10 to be interpreted in accordance with the laws of Florida and with the ethical requirements of that
11 jurisdiction. The Agreement may not be modified in any way without the express, written agreement
12 of both parties. This represents the entire agreement of the parties.
13

14 **13. Monroe County Code Ethics Provisions:** This provision is found in Section 18.8 below.
15

16 **14. Time Keeper Defined:** As used in this Agreement, the term "time keeper" shall include
17 Attorney and other attorneys and individuals identified in **Exhibit A** who will be providing services
18 under this Agreement and who will bill Client for their services in accordance with this Agreement.
19

20 **15. Methods of Approval and Consent By Client:** Any consents or approvals required by this
21 Agreement to be made by Client shall, unless the context expressly states otherwise, be made by the
22 County Attorney or an authorized Assistant County Attorney in written form, to include but not
23 limited to hand-written, typed, or printed notes, electronic mail, letters, or facsimile transmissions.
24

25 **16. Florida Government-in-the-Sunshine Law:** Attorney agrees that, unless specifically
26 exempted or excepted by Florida law, the provisions of Chapter 120, Florida Statutes, generally
27 require full and public discussion of matters to be voted upon by the Board of County
28 Commissioners. Attorney agrees to consult with the County Attorney's office concerning the
29 application of the Sunshine law from time to time concerning specific circumstances that may arise
30 during the term of this Agreement.
31

32 **17. Florida Public Records Law:** Attorney agrees that, unless specifically exempted or
33 excepted by Florida law or Rules and Regulations of The Florida Bar, the provisions of Chapter 119,
34 Florida Statutes, generally require public access to all records and documents which may be made
35 or received under this Agreement. Attorney agrees to consult with the County Attorney's office
36 concerning the application of the Public Records Law from time to time concerning specific
37 circumstances that may arise during the term of this Agreement.
38

39 **18. County's Standard Contract Terms:**
40

41 **18.1 No Assignments.** Without the prior written consent from Client, Attorney shall not
42 assign or transfer this Agreement.
43

44 **18.2 Entire Agreement.** The entire agreement between Client and Attorney with respect
45 to the subject matter hereof is contained in this Agreement. This Agreement supersedes all prior oral

1 and written proposals and communications between Client and Attorney related to this Agreement.
2 No provision of this Agreement shall be deemed waived, amended or modified by either party unless
3 such waiver, amendment or modification is in writing and signed by the party against whom the
4 waiver, amendment or modification is claimed. This Agreement shall be binding upon and inure
5 to the benefit of the parties hereto, their permitted successors and assigns.
6

7 **18.3 Severability.** If a term, covenant, condition or provision of this Agreement shall be
8 declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining
9 terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and
10 each remaining term, covenant, condition and provision of this Agreement shall be valid and shall
11 be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms,
12 covenants, conditions and provision of this Agreement would prevent the accomplishment of the
13 original intent of this Agreement. Client and Attorney agree to reform the Agreement to replace any
14 stricken provision with a valid provision that comes as close as possible to the intent of the stricken
15 provision.
16

17 **18.4 Captions.** The captions set forth herein are for convenience of reference only and shall
18 not define, modify, or limit any of the terms hereof.
19

20 **18.5 Governing Law and Venue.** This Agreement shall be governed by and construed in
21 accordance with the laws of the State of Florida applicable to contracts made and to be performed
22 entirely in the State. Venue for any legal action which may arise out of or under this agreement shall
23 be in Monroe County, Florida.
24

25 **18.5.1 Conflicts in interpretation.** Client and Attorney agree that, in the event of
26 conflicting interpretations of the terms or a term of this Agreement by or between them, the final
27 interpretation by Client shall apply.
28

29 **18.5.2 Adjudication of Disputes and Disagreements.** Client and Attorney agree
30 that all disputes and disagreements between them shall be attempted to be resolved by a meet and
31 confer session between representatives of Client and Attorney. If the issue or issues are still not
32 resolved to the satisfaction of both within 30 days after the meet and confer session, then either shall
33 have the right to seek such relief as may be provided by this Agreement or by Florida law.
34

35 **18.5.3 Cooperation.** In the event any administrative or legal proceeding is instituted
36 against either Client or Attorney relating to the formation, execution, performance, or breach of this
37 Agreement, Client and Attorney each agree to participate, to the extent required by the other, in all
38 proceedings, hearings, processes, meetings, and other activities related to the substance of this
39 Agreement. Client and Attorney each agree that neither shall be required to enter into any
40 arbitration proceedings related to this Agreement or any Attachment or Addendum to this
41 Agreement.
42

43 **18.5.4 Legal Obligations and Responsibilities; Non-delegation of Constitutional**
44 **or Statutory Duties.** This Agreement is not intended to relieve, nor shall it be construed as
45 relieving, either Client or Attorney from any obligation or responsibility imposed upon each by law

1 except to the extent of actual and timely performance thereof by the other, in which case the
2 performance may be offered in satisfaction of the obligation or responsibility. Further this
3 Agreement is not intended to authorize, nor shall it be construed as authorizing, the delegation of
4 the constitutional or statutory duties of Client, except to the extent permitted by the Florida
5 Constitution, state statutes, case law, and, specifically, the provisions of Chapter 125, Florida
6 Statutes.

7
8 **18.6 Attorney's Fees and Costs.** In the event any administrative proceeding or cause of
9 action is initiated or defended by Client or Attorney relative to the enforcement or interpretation of
10 this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, court
11 costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and
12 shall include reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses in
13 appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement
14 or as may be required by a court of competent jurisdiction shall be conducted in accordance with
15 the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit
16 court of Monroe County.

17
18 **18.7 Records.** Attorney shall maintain all books, records, and documents directly pertinent
19 to performance under this Agreement, including the documents referred to in Sections 5.4 and 10
20 of this Agreement, in accordance with generally accepted accounting principles, consistently
21 applied. Upon ten (10) business days written notice to the other, representatives of either Client or
22 Attorney shall have access, at all reasonable times, to all the other party's books, records,
23 correspondence, instructions, receipts, vouchers and memoranda (excluding computer software)
24 pertaining to work under this Agreement for the purpose of conducting a complete independent
25 fiscal audit. Attorney shall retain all records required to be kept under this Agreement for a
26 minimum of five years, and for at least four years after the termination of this agreement. Attorney
27 shall keep such records as are necessary to document the performance of the agreement and
28 expenses as incurred, and give access to these records at the request of the Client, the State of
29 Florida or authorized agents and representatives of said government bodies. It is the responsibility
30 of Attorney to maintain appropriate records to insure a proper accounting of all collections and
31 remittances. Attorney shall be responsible for repayment of any and all audit exceptions which are
32 identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County,
33 the Board of County Commissioners for Monroe County, or their agents and representatives.

34
35 **18.7.1 Public Access.** Client and Attorney shall allow and permit reasonable access
36 to and inspection of, all documents, papers, letters, or other materials subject to the Florida Public
37 Records Law, as provided in Chapter 119, Florida Statutes, and made or received by the them,
38 unless specifically exempted by State Statute, Rules and Regulations of The Florida Bar, or case
39 law. Client shall have the right to cancel this agreement upon violation of this provision by
40 Attorney.

41
42 **18.8 Monroe County Code Ethics Provision.** Attorney warrants that he has not
43 employed, retained or otherwise had act on his behalf any former Client officer or employee in
44 violation of Sections 2-527 through 2-533, Monroe County Code of Ordinances. For breach or
45 violation of this provision Client may, at its discretion, terminate this Agreement without liability

1 and may also, at its discretion, deduct from the sums owed under the Agreement, or otherwise
2 recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former
3 or present Client officer or employee. Client employees and officers are required to comply with
4 the standards of conduct delineated in Section 112.313, Florida Statutes, regarding, but not limited
5 to, solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation,
6 misuse of public position, conflicting employment or contractual relationship, and disclosure of
7 certain information.
8

9 **18.9 Authority.** Attorney warrants that he and the authorized time keepers are authorized
10 by law and the Rules and Regulations of The Florida Bar to engage in the performance of the
11 activities encompassed by this Agreement. If Attorney is a member of a law firm, either as partner,
12 shareholder, associate, or other relationship, Attorney warrants that he is authorized to enter into this
13 Agreement by Attorney's law firm.
14

15 **18.10 Public Entity Crime Statement.** Florida law provides that person or affiliate who
16 has been placed on the convicted vendor list following a conviction for public entity crime may not
17 submit a bid on an agreement to provide any goods or services to a public entity, may not submit
18 a bid on a agreement with a public entity for the construction or repair of a public building or public
19 work, may not submit bids on leases of real property to public entity, may not be awarded or
20 perform work as a contractor, supplier, sub-contractor, or consultant under a agreement with any
21 public entity, and may not transact business with any public entity in excess of the threshold amount
22 provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of
23 being placed on the convicted vendor list. Attorney warrants the neither Attorney nor any
24 authorized time keeper has been named to the convicted vendor list.
25

26 **18.11 Anti-kickback.** Attorney warrants that no person has been employed or retained to
27 solicit or secure this Agreement upon any contract or understanding for a commission, percentage,
28 brokerage or contingent fee, and that no employee or officer of Client has any interest, financially
29 or otherwise, in this Agreement, except as expressly stated herein. For breach or violation of this
30 warranty, Client shall have the right to annul this agreement without liability or, in its discretion, to
31 deduct any sums to be paid by Client under this Agreement, or otherwise recover, the full amount
32 of such commission, percentage, brokerage or contingent fee.
33

34 **18.12 Modifications and Amendments.** Any and all modifications of the terms of this
35 agreement shall only be amended in writing and executed by the Board of County Commissioners
36 for Monroe County, or an authorized agent of the County under the Monroe County Code of
37 Ordinances or policies adopted by the County, and by Attorney.
38

39 **18.13 Independent Contractor.** At all times and for all purposes hereunder, Attorney is
40 an independent contractor and not an employee of Client. No statement contained in this
41 Agreement shall be construed so as to find Attorney or any of the authorized time keepers, to be the
42 employees of Client, and they shall be entitled to none of the rights, privileges or benefits of
43 employees of Client.
44

1 **18.14 Compliance with Law.** In carrying out Attorney's obligations under this agreement,
2 Attorney shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the
3 provisions of this Agreement, including those now in effect and hereafter adopted. Any violation
4 of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement
5 and shall entitle Client to terminate this Agreement immediately upon delivery of written notice of
6 termination to Attorney.
7

8 **18.15 Licensing and Permits.** Attorney warrants that Attorney shall have, prior to
9 commencement of work under this agreement and at all times during said work, all required licenses
10 and permits whether federal, state, County or City.
11

12 **18.16 Non-Discrimination.** Attorney shall not discriminate, in its employment practices
13 and in providing services hereunder, on the basis of race, color, sex, religion, disability, national
14 origin, ancestry, sexual orientation, gender identity or expression, familial status, or age, and shall
15 abide by all federal and state laws regarding non-discrimination. Upon a determination by a court
16 of competent jurisdiction that such discrimination has occurred, this Agreement automatically
17 terminates without any further action by Client, effective the date of the court order. Attorney is
18 aware of the provisions of Section 13-101 through 13-106, Monroe County Code of Ordinances,
19 relating to non-discrimination, and agrees to abide by the Code's non-discrimination requirements.
20

21 **18.17 Claims for State or Federal Aid.** Client and Attorney agree that each shall be, and
22 is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this
23 Agreement, provided that all applications, requests, grant proposals, and funding solicitations by
24 Attorney shall be approved by Client prior to submission.
25

26 **18.18 Non-Reliance by Non-Parties.** No person or entity shall be entitled to rely upon the
27 terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or
28 entitlement to or benefit of any service or program contemplated hereunder, and Client and Attorney
29 agree that neither Client nor Attorney or any officer, agent, or employee of each shall have the
30 authority to inform, counsel, or otherwise indicate that any particular individual or group of
31 individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart,
32 inferior to, or superior to the community in general or for the purposes contemplated under this
33 Agreement.
34

35 **18.19 Attestations.** Attorney agrees to execute such documents as Client may reasonably
36 require, including a Drug-Free Workplace Statement, and a Public Entity Crime Statement.
37

38 **18.20 Signatures of Parties Required.** This Agreement shall not be effective until
39 executed by both Client and Attorney and received in final executed form by an authorized
40 representative of Client.
41

42 **18.21 Client Authority.** This Agreement has been approved at a duly noticed and legally
43 held public meeting conducted in Monroe County, Florida, or has been executed on behalf of Client
44 by a representative of Client authorized to do under the Monroe County Code of Ordinances or
45 policies approved by Client.

1
2 **18.22 No Personal Liability.** No covenant or obligation contained in this Agreement shall
3 be deemed to be a covenant or obligation of any member, officer, agent or employee of Client in his
4 or her individual capacity and no member, officer, agent or employee of Client shall be liable
5 personally on this Agreement or be subject to any personal liability or accountability by reason of
6 the execution of this Agreement.
7

8 **18.23 Execution in Counterparts.** This Agreement may be executed in any number of
9 counterparts, each of which shall be regarded as an original, all of which taken together shall
10 constitute one and the same instrument and Client and Attorney may execute this Agreement by
11 signing any such counterpart.
12

13 **THIS AGREEMENT** has been signed and executed by the Board of County Commissioners
14 of Monroe County, Florida, and has been signed and executed by Attorney, on the dates indicated
15 below.
16

17 **BOARD OF COUNTY COMMISSIONERS**
18 **OF MONROE COUNTY, FLORIDA**

19 **ATTEST:**

20
21 **DANNY L. KOLHAGE, CLERK**

22 **BY:** _____
23 **Dixie M. Spehar, Mayor**

24 **By:** _____
25 **Deputy Clerk**

26 **Date:** _____

27 **Date:** _____

28 **Witnesses For Attorney:**

29 **ATTORNEY**

30 _____
31 **Signature**

32 _____
33 **Signature**

34 _____
35 **Printed Name**

36 Michael H. Syme, V.P., Cohen & Grossky, P.C.
37 **Printed Name**

38 _____
39 **Signature**

40 11 Stancure Street, 15th Floor
Mailing Address

Pittsburgh, PA 15222
City/State/ZIP

(CAY Form 2005-02, Rev. 10/03/05)

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

Natileene W. Cassel
NATILEENE W. CASSEL

ASSISTANT COUNTY ATTORNEY

Date 10/17/05

**MONROE COUNTY, FLORIDA
STANDARD LEGAL SERVICES AGREEMENT
(CONSULTING/ADVISING)**

**AGREEMENT NUMBER:
CAY-CON-2005-09-01**

EXHIBIT A

Matter Identification: Preparation of RFP/RFQ/RFB, as appropriate, for an affordable housing project involving the Monroe County Land Authority, Monroe County Board of County Commissioners, and a private developer. The project must include funding from the State of Florida (Florida Housing Finance Corporation) and/or the federal government, and must involve financing/ownership provisions involving state and/or federal tax credits. Optional: At request of County Attorney or Land Authority Director, other items concerning housing leases and related matters may be included into this Matter Identification and the total fees and costs will be adjusted accordingly as approved by the County Attorney.

References:

3.2: Limitations to Scope of Representation: Attorney shall work with and coordinate activities with the Executive Director, Monroe County Land Authority. Attorney shall not engage in litigation activities or administrative proceedings without prior written consent of the County Attorney's Office. The total fees and costs to be incurred under this Agreement shall not exceed TEN THOUSAND DOLLARS (\$10,000).


3.4: County expectations and goals: Attorney will provide the Matter Identification product in a timely manner to facilitate the start of the project as soon as reasonably feasible.

4. Attorney's Hourly Fee Rate: Two Hundred Seventy- Five Dollars (\$275.00)

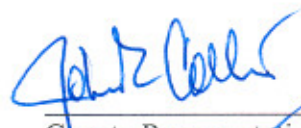
4.4: Approved Additional Time Keepers:

Name:	Hourly Rate:
Thad Kirkpatrick	Two Hundred Sixty Dollars (\$260.00)
Marc Rosenthal	Two Hundred Twenty-Five Dollars (\$225.00)
Michelle Yarbrough	One Hundred Sixty-Five Dollars (\$165.00)
Maureen Jordan	One Hundred Seventy-Five Dollars (\$175.00)

8.4: County Point of Contact: County Attorney and Mark Rosch, Executive Director, Monroe County Land Authority.



Attorney
Date: 10.5.05



County Representative
Date: 11/01/05